CANCELLED

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

(CHHATTISGARH)

Single Bench

CIVIL REVISION NO. 08 **/2004**

UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE 1908

PETITIONER : Anwar Haque, s/o Shamshujjamma Musalaman,

DEFENDANT NO.1 aged about 48 years, r/o Sawan, Tahisl and Mungeli, District Bilaspur (Chhattisgarh)

P. R. No. 127/04
Presented by Shri Ravi Bajpai
dated 27/01/04

VERSUS

RESPONDNETS : 1. Sheikh Rasool, s/o Sheikh Aziz Musalaman

PLAAINITFF s/o Hathanipara, Ward Bhatapara, District Raipur (Chhattisgarh)

DEFENDANT NO. 2 State of ~~M.P.~~ C.G. , through District Collector Bilaspur (Chhattisgarh)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(49)

आदेश पत्रक

मामला क्रमांक C.R. NO. 08/2004 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	20-2-2004 Shri Alok Bakshi, counsel for the petitioner. Smt. Chitra Shrivastava, Panel Lawyer for the State. Heard both the counsel. The petitioner has preferred this civil revision being aggrieved by the order dated 10-12-2003 passed by the learned Civil Judge, Class-I, Mungeli in civil suit No.26-A/1999 (Sheikh Rasool vs. Anwar Haque and another) whereby the learned Civil Judge allowed the application of respondent No.1 under Order 22 Rule 3 of the Code of Civil Procedure. The facts of the case are that Nyaz Bi filed a civil suit against the petitioner for declaration and permanent injunction and during the pendency of that suit Nyaz Bi died. Respondent No.1 herein filed an application under Order 22 Rule 3 of the C.P.C. for bringing him on record as the legal heirs of late Nyaz Bi. The petitioner herein raised an objection that late Nyaz Bi had not left any legal heirs and the Will alleged to have been executed by Nyaz Bi in favour of respondent No.1 is not genuine. Since the petitioner herein disputed the execution of the will as also the right of respondent No.1 for legal heirs, the learned Civil Judge entered into an enquiry as envisaged under Order 22 Rule 5 of the C.P.C.. Respondent No.1 presented the registered will executed in favour of him by late Nyaz Bi and in order	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to prove the will he filed an affidavit of himself and the affidavits of two attesting witnesses of the will namely Vishnu Prasad and Siyaram, whereas the counter affidavit was filed on behalf of the petitioner herein and two other persons alleging therein that no will was executed by late Nyaz Bi in favour of the respondent No.1.

The learned Civil Judge after believing the affidavits of respondent No.1 and two attesting witnesses namely, Vishnu Prasad and Siyaram and also the registered will reached the conclusion that late Nyaz Bi executed a registered will in favour of respondent No.1, therefore, he is the legal heir of late Nyaz Bi. After relying on the decisions of Punjab and Harayana High Court and also Rajasthan High Court the learned Civil Judge further held that in order to determine the question of legal heir if the registered will is filed that is sufficient proof for bringing that person on record as a legal heir of the deceased.

Under Order 22 Rule 5 of the C.P.C. 'the Court is required to conduct a summary enquiry in order to ascertain the fact whether the person who has applied is a lega representative or not.' In this case the learned Civil Judge conducted the preliminary enquiry on the basis of registered will and the affidavits reached the conclusion that respondent No.1 is a legal heir.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	Since the registered will has been filed by respondent No.1 herein, there was no reason before the trial Court to disbelieve that the affidavit of the respondent and two other witnesses simply based on the impression of petitioner herein that will was not genuine particularly when the petitioner had not any personal knowledge about the execution of the will by Nyaz Bi. Therefore, in view of the above, I am of the opinion that the learned Civil Judge has not committed any illegality in passing the above order. I do not find any substance in this civil revision and the same is liable to be dismissed and it is dismissed. Sd/- L.C.BHADOO Judge	